

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CHARL FITZGERALD HOWARD,)
)
Plaintiff,)
)
v.) Case No. 4:20 CV 734 RWS
)
UNKNOWN HOGAN, et al.,)
)
)
Defendants.)

MEMORANDUM AND ORDER

This matter comes before the Court on its own motion. On February 23, 2021, Plaintiff Howard was ordered to file an amended complaint within thirty days. (Docket No. 6). Howard has failed to comply with this order. Therefore, for the reasons discussed below, this action will be dismissed without prejudice. *See Fed. R. Civ. P. 41(b).*

Background

Howard is a self-represented litigant who is currently incarcerated at the St. Louis City Justice Center (SLCJC) in St. Louis, Missouri. On June 4, 2020, he filed a civil rights action pursuant to 42 U.S.C. § 1983, naming Judge Hogan, the Missouri State Public Defender's Office, Lieutenant Fawkes, and Lieutenant Turner as defendants. (Docket No.1). Lieutenants Fawkes and Turner were sued in their official capacities only. Howard also filed a motion for leave to proceed in forma pauperis. (Docket No. 3).

In his complaint, Howard alleged that Judge Hogan improperly denied him bail, and that the Missouri State Public Defender's Office had been deficient in its representation. Howard also accused Lieutenant Fawkes and Lieutenant Turner of wrongly placing him in administrative segregation while at the SLCJC.

On February 23, 2021, the Court granted Howard's motion for leave to proceed in forma pauperis. (Docket No. 6). Because Howard was proceeding in forma pauperis, the Court reviewed his complaint pursuant to 28 U.S.C. § 1915. Based on that review, the Court dismissed his claims against Judge Hogan and the Missouri State Public Defender's Office. (Docket No. 7). The Court also determined that Howard's claims against Lieutenant Fawkes and Lieutenant Turner were subject to dismissal. Specifically, Lieutenants Fawkes and Turner had been sued in their official capacities only, but Howard had not demonstrated the liability of St. Louis City, their employer.

Rather than dismissing Lieutenant Fawkes and Lieutenant Turner outright, Howard was ordered to file an amended complaint against those two defendants only. He was given directions about filing an amended complaint, and a copy of the Court's prisoner civil rights form was sent to him. Howard was given thirty days within which to comply. The Court advised him that if he failed to file an amended complaint, this action would be dismissed without prejudice and without further notice.

Discussion

As noted above, on February 23, 2021, the Court ordered Howard to file an amended complaint within thirty days. Howard was advised that failure to comply with the Court's order would result in the dismissal of this action without prejudice and without further notice. The amended complaint was due on or before March 25, 2021.

The deadline for Howard to file his amended complaint has expired. In fact, the Court has given him more than thirty days to respond. Nonetheless, he has failed to file an amended complaint as directed. He has also failed to file a motion with the Court seeking an extension of time in which to comply.

Under Rule 41(b), an action may be dismissed for failure to comply with a court order. *See Fed. R. Civ. P. 41(b).* *See also Brown v. Frey*, 806 F.2d 801, 803 (8th Cir. 1986) (stating that district court may dismiss a pro se litigant's action for failure to comply with a court order on its own initiative). Because Howard has not complied with the Court's order of February 23, 2021, or filed any type of motion seeking an extension of time in which to comply, the Court will dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice for failure to comply with the Court's order of February 23, 2021. *See Fed. R. Civ. P. 41(b).* A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that an appeal from this dismissal would not be taken in good faith.


RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 19th day of April, 2021.